

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARVIN BROWN,

Applicant,

vs.

No. CIV 08-0176 JB/RHS

MIKE A. HEREDIA,

Respondent.

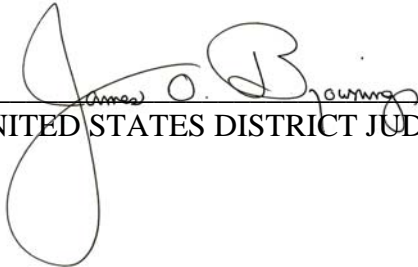
**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS, GRANTING
MOTION TO DISMISS AND TRANSFERRING THIS PROCEEDING**

THIS MATTER comes before the Court on: the Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition, or in the Alternative, Transfer Petition to the Tenth Circuit, filed June 25, 2008 (Doc. 18) ("Motion to Dismiss"); and (ii) the proposed Findings and Recommended Disposition of the United States Magistrate Judge, filed January 22, 2009 (Doc. 21). No objections have been filed regarding the Magistrate Judge's Proposed Findings and Recommended Disposition.

Having considered the parties' submittals and the Proposed Findings and Recommended Disposition, the Court concludes that the Magistrate Court Judge's proposed findings will be adopted, the Respondent's Motion to Dismiss will be granted, and the case will be transferred as a second or successive application.

IT IS ORDERED that: (i) the United State's Magistrate Judge's Proposed Findings and Recommended Disposition are adopted; (ii) that the Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition, or in the Alternative, Transfer Petition to the Tenth Circuit is granted; that (iii) the Clerk of Court shall

transfer this civil proceeding to the United States Court of Appeals for the Tenth Circuit for consideration as a second or successive § 2254 application pursuant to 28 U.S.C. § 1631; and (iv) that any pending motions are denied as moot.



UNITED STATES DISTRICT JUDGE

Parties and counsel:

Marvin Brown
Las Cruces, New Mexico

Plaintiff pro se

Mark J. Lovato
Assistant Attorney General
New Mexico Attorney General's Office
Albuquerque, New Mexico

Attorneys for the Defendant